

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
1:20-cv-55-FDW**

**CHRISTOPHER LEE MICHELSON,**      )  
  )  
  )  
**Plaintiff,**                                 )  
  )  
**vs.**    )  
  )  
**MARK S. GAGE, et al.,**                    )  
  )  
**Defendants.**                                )  
  )  
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**ORDER**

**THIS MATTER** is before the Court *pro se* Plaintiff's Complaint, (Doc. No. 1), Application to proceed *in forma pauperis*, (Doc. No. 2), and Notice of Inquiry, (Doc. No. 5), that is construed as a Notice of Voluntary Dismissal under Rule 41 of the Federal Rules of Civil Procedure.

*Pro se* Plaintiff has filed a civil rights suit pursuant to 42 U.S.C. § 1983 against ATF Agent Mark Gage and Asheville Police Detective Stephen Coon about incidents that allegedly occurred in 2015. Plaintiff addressed the same incidents against the same Defendants in case number 1:17-cv-50, which was dismissed on March 9, 2020. (1:17-cv-50, Doc. No. 197). In the instant Notice of Inquiry, Plaintiff asks that the Court dismiss the instant lawsuit as duplicative of case number 1:17-cv-50, and for the appointment of counsel. Plaintiff alleges that he is indigent and that he has been imprisoned for five years.

Plaintiff claims that he is indigent and has been imprisoned for the last five years. His Application to proceed *in forma pauperis* will be granted.

The Federal Rules of Civil Procedure state that a plaintiff may voluntarily dismiss an action without a court order "before the opposing party serves either an answer or a motion for summary

judgment.” Fed. R. Civ. P. 41(a)(1)(A)(i). Plaintiff’s Notice has terminated this action and the Clerk of Court will be instructed to close this case.

Plaintiff’s request for the appointment of counsel will be denied. Plaintiff was granted counsel in the related case, 1:17-cv-50, and the request for counsel is moot in the instant action due to his voluntary dismissal.<sup>1</sup>

**IT IS, THEREFORE, ORDERED** that:

1. Plaintiff’s Application to proceed *in forma pauperis*, (Doc. No. 2), is **GRANTED**. The Clerk is directed to enter an Order Waiving Initial Partial Filing Fee and Directing the Correctional Facility to Transmit Partial Payments.
2. Plaintiff’s Notice of Inquiry, (Doc. No. 5), is construed as a notice of voluntary dismissal under Fed. R. Civ. P. 41 and has terminated this action; the incorporated Motion seeking the appointment of counsel is **DENIED** as moot.
3. The Clerk is directed to close this case.

Signed: March 17, 2020

  
Frank D. Whitney  
Chief United States District Judge

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<sup>1</sup> Even if Plaintiff had not moved for voluntary dismissal, the Complaint would be dismissed as duplicative.